

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT OF
PUBLIC SAFETY,

Petitioner,

vs.

NATHAN C. SWANN,

Respondent.

No. 13-1067 PO

DECISION

Nathan C. Swann is subject to discipline because he committed a criminal offense.

Procedure

On June 14, 2013, the Director of the Department of Public Safety (“the Director”) filed a complaint seeking to discipline Swann’s peace officer license. Swann was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on June 19, 2013. Swann did not file an answer.

On July 25, 2013, the Director filed a motion for summary decision. We notified Swann by letter dated August 5, 2013, that he should file his response to the Director’s motion by August 19, 2013. Swann did not file a response.

Pursuant to 1 CSR 15-3.446(6)(A),¹ we may decide a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and no party genuinely

¹ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

disputes such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.²

By failing to answer or otherwise respond to the complaint, Swann has admitted the allegations it contains.³ By failing to respond to the motion for summary decision, Swann has failed to raise a genuine issue as to the facts the Director established in his motion.⁴

Accordingly, the findings of fact are based on the allegations contained in the complaint and the admissible evidence attached to the Director's motion: business records authenticated by a custodian of records affidavit and certified court documents, including an information and judgment.

The following facts, based on this evidence, are undisputed.

Findings of Fact

1. Swann was licensed as a peace officer by the Director at all relevant times.
2. On October 11, 2011, Swann attempted to cause physical injury to R.S. by striking R.S. under the left eye.
3. R.S. was a member of Swann's family.
4. On February 1, 2012, in Jackson County Circuit Court, Swann pled guilty to one count of third-degree domestic assault.⁵
5. The court suspended the imposition of sentence and placed Swann on two years' probation.

² 1 CSR 15-3.446(6)(B).

³ 1 CSR 15-3.380(7)(C).

⁴ 1 CSR 15-3.446(6)(B).

⁵ § 575.074.1, RSMo. Supp. 2011. Statutory references are to RSMo. Supp. 2012 unless otherwise noted.

Conclusions of Law

We have jurisdiction to hear this case.⁶ The Director has the burden of proving that Swann has committed an act for which the law allows discipline.⁷ The Director alleges that there is cause for discipline under § 590.080.1, which provides:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed.

Swann committed and pled guilty to the crime of third-degree domestic assault. There is cause to discipline Swann under § 590.080.1(2).

Summary

Swann is subject to discipline under § 590.080.1(2). The hearing presently scheduled for December 4, 2013 is canceled.

SO ORDERED on October 8, 2013.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁶§ 590.080.2.

⁷*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).